

State of New York Court of Appeals

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To be argued Wednesday, June 8, 2005

No. 120 Metro Enviro Transfer, LLC v Village of Croton-on-Hudson

In 1998, after an extensive environmental review process, Metro Enviro Transfer, LLC (Metro) obtained a special use permit from the Village of Croton-on-Hudson to operate a waste transfer facility for construction and demolition debris. The permit contained a number of conditions, including restrictions on the types and amounts of waste the facility could accept, and provided that failure to comply with "each and every condition ... shall be grounds for a stop-work order and revocation of this permit."

In 2001, Metro sought to renew the permit. After extensive public hearings, the Village denied the application in January 2003 and ordered Metro to close the facility and stop accepting waste by February 17, 2003. The Village found that Metro had violated permit conditions by accepting unauthorized waste on at least 23 occasions; exceeding tonnage restrictions on 25 occasions and falsifying daily tonnage reports; stockpiling tires; and failing to properly train its employees to exclude unauthorized waste. The Village concluded the violations posed a threat to the safety of the community and the environment.

Metro commenced this article 78 proceeding to annul the determination, contending there was no evidence that its permit violations caused actual harm to the community or environment. Supreme Court granted Metro's petition and remitted the matter to the Village to issue a new permit, finding the Village's decision was not supported by substantial evidence and was "impermissibly based, in part, upon generalized opposition, which remains uncorroborated by any empirical data." The court said the Village "failed to recognize that the violations have been cured, penalties have been assessed and paid and [Metro] has implemented measures to assure ongoing permit compliance. Moreover, [the Village] and its expert have failed to point to any evidence that an adverse environmental condition has resulted from" operation of the facility.

The Appellate Division, Second Department reversed the lower court and reinstated the Village's determination, saying Supreme Court erroneously substituted its judgment for that of the Village. The Appellate Division said, "The Village did not need to wait for actual harm to occur because of the various permit violations committed by [Metro] in order to deny renewal. It was sufficient that the conditions, established after a lengthy review process to address potential adverse impacts on the neighborhood, were violated, and there is substantial evidence in this record not only establishing the existence of the subject violations, but also that they posed a threat to the community and environment."

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